

# Court of Appeals, State of Michigan

## ORDER

Administrative Employer Services Inc v James R. Mack

Docket No. 268714

LC No. 05-005195-CK

Kathleen Jansen  
Presiding Judge

Mark J. Cavanagh

E. Thomas Fitzgerald  
Judges

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Pursuant to MCR 7.205(D)(2), the Court orders that the February 9, 2006, order granting plaintiff's motion for a preliminary injunction is VACATED. A restrictive covenant must protect an employer's "reasonable competitive business interests." MCL 445.774a(1); *St Clair Medical v Borgiel*, 270 Mich App 260, 265-266; 715 NW2d 914 (2006). Defendant presented evidence that his new employer, Kelly Services Leasing, Inc. (KSL), does not compete with plaintiff in the state of Michigan, and thus, the noncompete provision at issue does not protect plaintiff from unfair competition, or loss of goodwill and clients. The evidence demonstrated that plaintiff's clients are primarily located in Michigan, whereas KSL targets more national business and only leases employees in Michigan to three companies. Instead of rendering a finding on this particular point, the trial court stated that it was reasonable to conclude that plaintiff's legitimate business interest would be put in jeopardy if the court did not enforce the agreement since defendant had contact with plaintiff's customers and extensive access to highly sensitive aspects of plaintiff's business. This would only be so if KSL was actually competing for business with plaintiff in the state of Michigan. While plaintiff speculated and alleged that KSL intended to expand to the Michigan market, "an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Dunlap v City of Southfield*, 54 Mich App 398, 403; 221 NW2d 237 (1974). Because the issue of whether KSL actually competes with plaintiff affects the likelihood of success and whether plaintiff will suffer irreparable harm, the trial court should have resolved the issue before issuing a preliminary injunction. Accordingly, the matter is REMANDED for further proceedings in accordance with this order. In all other respects, the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review. The Court retains no further jurisdiction.

The motion to file a reply brief is GRANTED.

Jansen, J. dissents and states as follows:

The covenant not to compete precluded defendant from competing with plaintiff in the state of Michigan. Thus, before granting injunctive relief, it was necessary for the trial court to determine whether defendant's new employer, Kelly Services Leasing, Inc. (KSL), actually competed with plaintiff for business in the Michigan market. Certain evidence before the trial court, including defendant's deposition testimony, suggested that KSL did not currently compete with plaintiff in the Michigan market. However, other evidence indicated that KSL currently represented Michigan clients and that KSL intended to expand its operations in the state of Michigan.

A trial court's decision to grant a preliminary injunction is reviewed for an abuse of discretion. *Co Road Ass'n of Michigan v Governor*, 260 Mich App 299, 303; 677 NW2d 340 (2004). An abuse of discretion occurs when an unprejudiced person, considering the facts upon which the trial court relied, would say that there was no justification or excuse for the ruling. *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002). An abuse of discretion does not occur when the result reached by the trial court is within the "principled range of outcomes." *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005). Upon implicitly determining that KSL competed with plaintiff in the state of Michigan, the trial court granted the preliminary injunction. Given the competing evidence concerning the nature and extent of KSL's operations in the state of Michigan, it cannot be said that this determination fell outside the "principled range of outcomes." The trial court did not abuse its discretion in granting the preliminary injunction and enforcing the covenant against defendant. Accordingly, I would deny the application for leave to appeal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 16 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk